

**MEDICAL BOARD OF CALIFORNIA - DIVISION OF MEDICAL QUALITY
ETHICS COURSE AS A CONDITION OF PROBATION
INITIAL STATEMENT OF REASONS**

Hearing Date: Friday, May 7, 2004

Subject Matter of Proposed Regulations: Ethics Course as a Condition of Probation

(1) Section(s) Affected: Title 16, California Code of Regulations section 1358.1

Specific Purpose of each adoption, amendment, or repeal:

Senate Bill 523 (Stats. 1995, Chapter 938; Kopp) provides that a penalty in any administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedure Act.

In 2003, the board adopted regulations that incorporated by reference disciplinary guidelines entitled, "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (9th Edition, 2003).

Since the adoption of the "Manual of Disciplinary Orders and Disciplinary Guidelines" (9th Edition, 2003) the board has proposed a new section to define Condition 17, Ethics Course, for a licensee who is required, as a condition of probation, to take and successfully complete an ethics course. The board will require the licensee to take and successfully complete an ethics course approved by the division that meets specified requirements.

Factual Basis/Rationale

Factual basis for determination that each proposed change is necessary:

The board's mandate is to protect the health, safety, and welfare of California consumers. The board's highest priority is to protect consumers by utilizing its authority to investigate complaints and take appropriate disciplinary action against licensees and applicants for licensure who endanger the health and safety of consumers.

The board's disciplinary guidelines are intended to assist administrative law judges, deputy attorneys general, board members, and staff in selecting the most appropriate penalty for a licensee who has violated the laws and regulations governing the practice of physicians and surgeons.

In August 2002, the board created an Ethics Task Force and invited ethicists, physicians and surgeons, and representatives from the Office of the Attorney General,

California Medical Association, and Center for Public Interest Law. The Ethics Task Force looked at the basic components for a professionalism (ethics) program to enhance public protection for healthcare consumers and assist in rehabilitating and monitoring probationers required to take the ethics course. It was the consensus of the experts in the field of ethics that the criteria described in the proposed regulation were all necessary components of an ethics program designed to effectuate behavioral change. On July 31, 2003 the board members on the Ethics Task Force unanimously voted to approve the ethics program.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon:

Minutes of Ethics Task Force meetings held on: December 19, 2002; February 27, 2003; May 21, 2003; and July 31, 2003.

“Manual of Model Disciplinary Orders and Disciplinary Guidelines” (9th Edition, 2003).

Business Impact

This regulation will not have a significant adverse economic impact on businesses since we are aware of only one business (a non-profit) which offers this type of course. Any additional costs would be passed on through increased tuition costs. Those increased tuition costs would only be applicable to physicians and surgeons who are disciplined by the board, placed on probation, and ordered to take an ethics course as a condition of probation. (There are various colleges and universities across the United States which also offer ethics seminars and courses; however, changes to our regulations will not impact those providers.)

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.